Supreme Court, U.S.
FILED
MAY 30 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1031

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CITIBANK, N.A.,

Petitioner,

v.

NGOC QUANG TRINH,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

SUPPLEMENTAL BRIEF FOR PETITIONER PURSUANT TO RULE 15.7

ROBERT H. BORK
5171 Palisade Lane, N.W.
Washington, D.C. 20016

ARNOLD M. LERMAN *
DAVID WESTIN
SCOTT HOING
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000

KENNETH S. GELLER
MARK I. LEVY
MAYER, BROWN & PLATT
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

* Counsel of Record

Counsel for Petitioner

May 30, 1990

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. 88-1031

CITIBANK, N.A.,

Petitioner,

v.

NGOC QUANG TRINH,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

SUPPLEMENTAL BRIEF FOR PETITIONER PURSUANT TO RULE 15.7

Pursuant to Rule 15.7 of the Rules of this Court, petitioner Citibank, N.A., files this brief in light of the Court's decision yesterday in *Citibank, N.A. v. Wells Fargo Asia Ltd.*, No. 88-1260 (May 29, 1990). This case and *Wells Fargo* are companion cases in this Court, and the present petition apparently is being held pending disposition of *Wells Fargo*. Now that *Wells Fargo* has been decided, we submit that the Court should grant certiorari and set this case for consideration on the merits or, at the least, vacate the decision below and remand the case to the court of appeals for further consideration.

As we explained in our certiorari petition, this case presents an important and recurring question that warrants the Court's review. By imposing liability on the home office of a United States bank when a foreign government has prevented the bank's foreign branch from repaying a deposit, the "decision below collapses the distinction carefully established in federal law between domestic and foreign deposits." Pet. 6. Moreover, as the Solicitor General stated in his *amicus curiae* brief at the petition stage, "[t]he federal banking agencies * * * are greatly troubled by the court of appeals' fundamental misapplication of familiar banking law principles to the deposit agreement in this case" (U.S. Am. Br. 15), and the erroneous decision below has "compounded the substantial uncertainty" that exists in this area of the law (*id.* at 15) and "portend[s] future difficulties for United States banking interests" (*id.* at 7). Because of the particular need for certainty and predictability in the banking field, the Court should grant the petition and resolve the basic legal rules that govern routine banking transactions in foreign branches of United States banks.

At a minimum, the Court should grant the petition, vacate the judgment of the court of appeals, and remand the case for further proceedings. Given that the responsible federal agencies are "deeply concerned" about (U.S. Am. Br. 9) the erroneous decision below, that ruling—which reflects no recognition whatsoever of the applicable federal provisions and policies implicated here—should not simply be allowed to stand. By vacating and remanding, the Court would enable the court of appeals to reconsider its decision in light of the considered views of the federal banking regulators and the Department of State expressed in the *amicus* briefs filed in this case and *Wells Fargo*. Indeed, now that the Solicitor General has forcefully presented the position of the United States, it would significantly increase the prospects of a conflict in the circuits if the contrary ruling of the Sixth Circuit were to remain in effect.

Furthermore, the decision below suffers from a critical defect similar to that which led this Court to vacate and remand in *Wells Fargo*. While the Sixth Circuit purported to apply Vietnamese law (Pet. App. 7a n.2), in fact its ruling was expressly grounded in "general banking principle[s]" (*id.* at 9a) and relied entirely on authorities under New York law; the court did not cite (nor did respondent, *see id.* at 28a (Brown, J., dissenting)) a single Vietnamese source indicating that Citibank's home office would be liable for deposits in its Saigon branch if the government of Vietnam prevented the branch from making repayment. Because of the Sixth Circuit's reliance on general banking principles (compare *Wells Fargo*, slip op. 12) and the resulting uncertainty about the exact nature of its decision, this case, like *Wells Fargo*, should be remanded "for the Court of Appeals to determine which law applies, and the content of that law" (*Wells Fargo*, slip op. 11).

Respectfully submitted,

ROBERT H. BORK
5171 Palisade Lane, N.W.
Washington, D.C. 20016

ARNOLD M. LERMAN *
DAVID WESTIN
SCOTT HOING
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000

KENNETH S. GELLER
MARK I. LEVY
MAYER, BROWN & PLATT
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

* Counsel of Record

Counsel for Petitioner

May 30, 1990